Commission approved the trading of Customized FCOs.[11]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–Phlx–95–03) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–6352 Filed 3–14–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20948; No. 812–9074]

Aetna Insurance Company of America, et al.

March 9, 1995.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice of application for an order under the Investment Company Act of 1940 (''1940 Act'').

APPLICANTS: Aetna Insurance Company of America (''Aetna''); Variable Annuity Account I of Aetna (''Account I''), Variable Annuity Account II of Aetna (''Account II''), and any other Separate Accounts established in the future by Aetna (''Future Accounts,'' and together with Accounts I and II, ''Separate Accounts'') to support certain group and individual deferred variable annuity contracts (''Contracts'') or other variable annuity contracts that are substantially similar in all material respects to the Contracts (''Other Contracts'') and that may be issued in the future by Aetna; [1] Aetna Life Insurance and Annuity Company (''ALIAC''), the principal underwriter of the Contracts; and Any Member Broker-Dealer of the National Association of Securities Dealers, Inc. (''NASD'') That May In The Future Serve As Principal Underwriter For The Contracts (''Future Underwriters'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act granting exemptions from the provisions of Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seeking an order permitting the deduction of a mortality and expense risk change from the assets of the Separate Accounts in connection with the issuance and sale of the Contracts or Other Contracts.

FILING DATE: The application was filed on June 24, 1994, and amended on December 23, 1994 and February 23, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 3, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, c/o Aetna Insurance Company of America, 151 Farmington Avenue, Hartford, Connecticut 06156.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Assistant Special Counsel, or Wendy F. Friedlander, Deputy Chief, at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. Aetna, a stock life insurance company, is a wholly-owned subsidiary of Aetna Life Insurance and Annuity Company (''ALIAC''), which is, in turn, a wholly-owned subsidiary of Aetna Life and Casualty Company. Aetna is in the process of qualifying to do business and obtaining licenses to sell insurance in all jurisdictions except New York.

2. The Separate Accounts are or will be established by Aetna for the purpose of funding variable annuity contracts. The Separate Accounts are or will be registered under the 1940 Act as unit investment trusts. Assets of the Separate Accounts will be allocated among the shares of one or more registered open-end investment companies (''Funds''), some of which may be managed by ALIAC or its affiliates.

3. ALIAC is the principal underwriter of the Contracts and may act as investment adviser to some of the Funds. ALIAC is registered as a broker-dealer under the Securities Exchange Act of 1934 and as an investment adviser under the Investment Advisers Act of 1940. ALIAC is a member of NASD.

4. Non-tax qualified Contracts are funded through Account I and Contracts purchased and used in connection with retirement plans under Sections 401(a) or 403(b) of the Internal Revenue Code, as amended (''Code'') are funded through Account II. Individual Contracts qualifying for favorable federal income tax treatment under Section 408 of the Code and Contracts purchased by deferred compensation plans under Section 457 of the Code may be funded through either Account I or Account II.

5. The Contracts may provide for, among other things single or installment premium payments, or a combination of the two, and deferred or immediate annuity payments on a fixed or variable basis beginning on a date elected by the Contract owners and in no event later than certain contractually established dates (''Retirement Date''). Additionally, Contract owners may allocate premium payments to: (a) One or more of the Funds available under a Contract; (b) in some Contracts to a fixed Interest Option, which is part of Aetna's general account; and (c) in some Contracts to a Credited Interest Option, with or without a market value adjustment upon redemption prior to the end of a guaranteed term, and assets attributable to such an option may be held in Aetna's general account or in a non-insulated, none-utilized separate account of Aetna.[2]

6. The Contracts provide for the payment of a standard death benefit equal to the greater of (i) the cash value of the Contract account, or (ii) the sum of purchase payments less any withdrawals, or (iii) the contract holder's account value at the most recent seventh year anniversary of the Contract adjusted for purchase payments, withdrawals and amounts applied to an annuity option. The Contracts also provide for the payment of an enhanced death benefit equal to the greater of (i) the cash value of the Contract account, or (ii) during the first year of the Contract, the amount of premiums paid (adjusted for any withdrawals and any amount paid to an annuity option), or (iii) during subsequent years of the Contract, an

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[11] *See* Exchange Act Release No. 34925, *supra* note 4.

[12] 15 U.S.C. 78s(b)(2) (1988).

[13] 17 CFR 200.30–3(a)(12) (1994).

[1] Applicants have undertaken to amend their application during the Notice Period to include the representation that Future Contracts will be substantially similar ''in all material respects'' to the Contract.

[2] Applicants are not requesting Commission review of whether the Fixed Interest Option or any other Credited Interest Option under the Contracts are securities required to be registered under the 1933 Act. Applicants will not consider any order issued as a result of this application to be an expression of any view by the Commission on this issue.

amount determined by increasing premiums paid in prior years by a contractually-determined factor (adjusted for any withdrawals or any amounts paid for an annuity option), or (iv) cash value on the most recent seventh year anniversary of the Contract, adjusted for purchase payments, withdrawals and amounts applied to an annuity option.[3]

7. Various fees and charges are deducted under the Contracts. Aetna may impose a maximum annual maintenance charge of $35 under the Contracts for administrative services provided to Contract holders. Aetna currently deducts a $30 annual maintenance charge from Cash Value on the Contract date, on each Contract Anniversary prior to the Retirement Date, and upon termination of the Contract. In addition, Aetna reserves the right to deduct a daily administrative expense charge of up to 0.25%, on an annual basis, of the net asset value of the Separate Accounts, to cover its administrative expenses during the accumulation period and the annuity period. Of the 0.25% maximum administrative expense charge, Aetna currently deducts 0.15% annually of the average daily net assets of the Separate Accounts during the accumulation period. An administrative charge currently is not imposed during the annuity period.

8. No charge currently is made for transfers of cash values among the Funds or from a Fund to a Fixed or Credited Interest Option during the accumulation period. Aetna reserves the right to establish a minimum amount for transfers and to impose a transfer charge of up to $10 for each transfer request after the first twelve requests in each Contract year to reimburse Aetna for its transfer administrative costs during the accumulation period. No transfer fees are charged during the annuity period.

9. No profit is anticipated from the maintenance charge, transfer fee and administrative expense charges, which will not be greater than Aetna's average expected cost of the services to be provided, defined in accordance with Rule 26a–1 under the 1940 Act. Applicants intend to rely on Rules 26a–1 and 6c–8(c) under the 1940 Act for the necessary exemptive relief to permit imposition of these fees. Aetna represents that it will monitor its administrative expenses and the proceeds of these charges on at least an annual basis to ensure compliance with Rule 26a–1 under the 1940 Act.

10. No charge currently is deducted for premium taxes. Aetna reserves the right, however, to deduct such taxes from cash value under the Contracts at the time such taxes are payable. Aetna reserves the right to offer Other Contracts that permit the deduction of premium taxes from cash values or purchase payments. No charges currently are made for federal, state or local taxes, other than premium taxes, that Aetna incurs or that may be attributable to a Separate Account or the Contracts. Aetna reserves the right to deduct such taxes in the future for any such tax or economic burden from any sales load payable to Aetna with respect to the Contracts. Aetna will not deduct any such taxes from the assets of the Separate Accounts unless it has been specifically authorized to do so by the Commission. Applicants intend to rely on Rule 26a–2(d) under the 1940 Act to permit the deduction of taxes from the assets of a Separate Account.

11. No sales charge is deducted from premium payments. Aetna reserves the right to deduct a contingent deferred sales charge (''CDSC'') of up to 9% of the amount withdrawn, on partial or full Contract surrenders and withdrawals of Account Value, and upon election of certain annuity payment options, to compensate Aetna for its distribution expenses. The CDSC is applied to purchase payments and not to any increases in Account Value. The maximum CDSC currently is 7%, decreasing by up to 1% per year after payment of a purchase payment until it reaches zero after seven years. The aggregate CDSC is guaranteed never to exceed 8.5% of aggregate premium payments. The CDSC may be waived under certain specified circumstances. Amounts attributable to purchase payments are considered withdrawn before amounts attributable to income, and the oldest purchase payments are considered withdrawn first when determining the amount of CDSC that should be applied.

12. Aetna anticipates that the CDSC will not generate revenues that will be sufficient to pay all its distribution costs. Excess distribution costs, thus, would be paid out of Aetna's general assets, which may include profits derived from the mortality and expense risk charge assessed under the Contracts. Applicants will rely on Rule 6c–8 under the 1940 Act to deduct the CDSC.

13. A daily charge will be deducted from the net assets of the Separate Accounts to compensate Aetna for assuming certain mortality and expense risks. Aetna currently charges 0.35% for the expense risk, 0.75% for standard mortality risks, and 0.15% for the enhanced death benefit, or a current total charge of 1.25%. Aetna reserves the right to charge up to .90% on an annual basis for standard mortality risks, in which event the charge for mortality and expense risks would be at a maximum annual rate of 1.40% of net assets.

14. The mortality risk arises from Aetna's contractual obligation to make annuity payments (in accordance with the annuity tables and other provisions in the Contracts) regardless of how long any individual annuitant or all annuitants may live. The mortality risk is that an annuitant will live longer than predicted by Aetna's actuarial projections, thereby resulting in higher than expected annuity payments. This undertaking assures that neither an annuitant's own longevity, nor an improvement in general life expectancy, will adversely affect the monthly annuity payments that the annuitant will receive under the Contracts. Aetna also assumes a mortality risk in that Aetna may be obligated to pay either a standard death benefit or an enhanced death benefit in excess of a contract holder's account value.

15. The expense risk assumed by Aetna is the risk that charges for administration expenses, which are guaranteed not to increase for the life of the Contracts, may be insufficient to cover the actual costs of issuing and administering the Contracts or Other Contracts.

16. Aetna currently anticipates that, under ordinary circumstances, the mortality and expense risk charge will be more than sufficient to cover its costs. Accordingly, any excess will be profit to Aetna and may be available to pay distribution costs for the Contracts that are not covered by funds derived from the CDSC.

Applicants' Legal Analysis

1. Applicants request exemptions under Section 6(c) from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of a mortality and expense risk charge from the assets of the Separate Accounts in connection with funding the Contracts and Other Contracts. Applicants further request that such exemptive relief be extended

[3] The death benefit calculations in (iii) under the standard death benefit and in (ii), (iii) and (iv) under the enhanced death benefit apply until the Certificate Holder or annuitant reaches the death benefit maximum age shown in the Contract. Thereafter, the death benefit is only adjusted for purchase payments, withdrawals and amounts applied to annuity options. Currently, there is no limitation on the maximum death benefit payable under the standard death benefit or the enhanced death benefit; however, Aetna reserves the right in the future to impose a limitation on the maximum allowable death benefit under (iii) under the standard and under (ii), (iii) and (iv) under the enhanced death benefit.

to ALIAC as principal underwriter for the Aetna Contracts and to Future Underwriters, a class consisting of broker-dealers who may, in the future, act as principal underwriters of the Contracts. Applicants submit that the requested exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants state that the terms of the relief requested with respect to any Other Contracts funded by the Separate Accounts or distributed by any Future Underwriter are consistent with the standards set forth in Section 6(c) of the 1940 Act. Without the requested relief, exemptive relief would have to be requested for each new separate account established to fund the Other Contracts or for each Future Underwriter. Such additional requests for exemptive relief would present no issues under the 1940 Act not already addressed in this application. The requested relief would eliminate the need for the filing of redundant exemptive applications, thereby reducing administrative expenses, maximizing efficient use of resources and, thus, promoting competitiveness in the variable annuity market. Both the delay and the expense of repeatedly seeking exemptive relief would, Applicants assert, impair Aetna's ability to effectively take advantage of business opportunities as they arise. If Aetna were repeatedly to seek exemptive relief with respect to the same issues addressed in this application, investors would not receive additional protection or benefit and could be disadvantaged by Aetna's increased overhead. Applicants submit, therefore, that the requested relief is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. Section 6(c) of the 1940 Act authorizes the Commission to grant an exemption from any provision, rule or regulation of the 1940 Act to the extent that it is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

4. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

5. Applicants submit that Aetna is entitled to reasonable compensation for its assumption of mortality and expense risks. Applicants represent that the mortality and expense risk charge under the Contracts with the standard death benefit is a reasonable and proper insurance charge to compensate Aetna for assuming certain risks under the Contracts, including the risk that: (a) annuitants under the Contracts will live longer as a group than has been anticipated in setting the annuity rates guaranteed in the Contracts; (b) the cash value will be less than the death benefit; and (c) administrative expenses will be greater than amounts derived from the administrative charges. Thus, Applicants assert that this charge is consistent with the protection of investors.

6. Aetna represents that the annual charge of 1.25% of net assets for mortality and expense risks (.90% and .35%, respectively) assumed by it in connection with the standard death benefit is within the range of industry practice for comparable annuity contracts. This representation is based upon Aetna's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. Applicants represent that Aetna will maintain at its principal offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.[4]

7. Applicants further represent that the additional mortality risk charge of 0.15% for the enhanced death benefit is reasonable in relation to the risks assumed under the Contracts. Based on an actuarial analysis of the cost of providing an enhanced death benefit, it was determined that the additional mortality risk charge of up to 0.15% was a reasonable charge for providing the enhanced death benefit in relation to the risks assumed by Aetna under the Contracts. Aetna will maintain at its principal offices,[5] available to the Commission, upon request, a memorandum setting forth in detail the methodology used in determining that the additional risk charge of up to 0.15% for the enhanced death benefit is reasonable in relation to the risks assumed by Aetna under the Contracts.

8. Similarly, prior to making available any Other Contracts through the Separate Accounts, Applicants represent that the mortality and expense risk charges under such Other Contracts will be within the range of industry practice for comparable contracts. Aetna undertakes to maintain at its principal offices, available to the Commission upon request, memoranda setting forth in detail the products analyzed in the course of, and the methodology and results of, of its comparative surveys and analyses in reaching these determinations.

9. Applicants acknowledge that, if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be available to pay distribution expenses not reimbursed by the CDSC deducted under the Contracts. Aetna has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Separate Accounts and the Contract holders. The basis for that conclusion is set forth in a memorandum which will be maintained by Aetna at its administrative offices and will be available to the Commission.

10. Applicants represent that Other Contracts will be offered only if Aetna concludes that the proposed distribution financing arrangement will benefit such Other Contracts and the Separate Accounts established in connection with their issuance and the Contract owners. The basis for such conclusion will be set forth in a memorandum which will be maintained by Aetna at its administrative offices and will be made available to the Commission, upon request.[6]

11. Accordingly, Applicants assert that the deduction for the assumption of mortality and expense risks is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

12. Aetna also represents that the Separate Accounts will only invest in management investment companies which undertake, in the event they should adopt a plan under Rule 12b–1 to finance distribution expenses, to have a board of directors or trustees, a

[4] Applicants have undertaken to amend their application during the Notice Period to include this representation.

[5] Applicants have undertaken to amend their application during the Notice Period to include this representation.

[6] Applicants have undertaken to amend their application during the Notice Period to include these representations.

majority of whom are not ''interested persons'' of the company, formulate and approve any such plan in accordance with Rule 12b–1.

Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested to permit the daily deduction from the assets of the Separate Accounts of the charge for assumption of mortality and expense risks, including an enhanced death benefit, at a maximum annual rate of 1.40% of net assets, are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–6354 Filed 3–14–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–20946; 812–9318]

The First Trust Special Situations Trust, et al.; Notice of Application

March 8, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: The First Trust Special Situations Trust, Target Equity Trust, Value Ten Series 1 and subsequent series, and Nike Securities L.P. (''Nike'').

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(b) from section 17(a).

SUMMARY OF APPLICATION: Applicants request an order to permit a terminating series of a unit investment trust to sell portfolio securities to a new series of the trust.

FILING DATE: The application was filed on November 3, 1994, and was amended on March 3, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 3, 1995 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's request, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, c/o Nike Securities L.P., 1001 Warrenville Road, Suite 3000, Lisle, Illinois 60532.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The First Trust Special Situations Trust (the ''Trust''), a unit investment trust registered under the Act, consists of a number of series (''Series''), each of which will be similar but separate and designated by a different series number. Target Equity Trust, Value Ten Series 1 is of one of the Series of the Trust. Nike is the sponsor for each Series (the ''Sponsor''). Applicants request that the relief sought herein apply to any future Series that has the characteristics described below and in the application.

2. Each Series will have a portfolio which contains equity securities (''Equity Securities'') which are (i) actively traded (*i.e.*, have had an average daily trading volume in the preceding six months of at least 500 shares equal in value to at least 25,000 United States dollars) on an exchange (an ''Exchange'') which is either (a) a national securities exchange which meets the qualifications of section 6 of the Securities Exchange Act of 1934 or (b) a foreign securities exchange that meets the qualifications set out in the proposed amendment to rule 12d3–1(d)(6) under the Act, as proposed by the Commission,[1] and that releases daily closing prices, and (ii) included in a published index (an ''Index'').

3. The investment objective of each Series is to seek a greater total return than the stocks comprising an entire related Index (*e.g.*, the Dow Jones Industrial Average (''DJIA''), the Hang Seng Index, or the Financial Times Industrial Ordinary Share Index). Certain of the Series will acquire approximately equal values of a designated number of stocks in the DJIA having the highest dividend yields as of a specified date and will hold those stocks for a designated period. Other Series will create their portfolios in a similar manner using securities that are included in other Indices. The Sponsor of the Series intends that, as each Series terminates, a new Series (''New Series'') based on the appropriate Index will be offered for the next period.

4. Each Series has or will have a contemplated date (a ''Rollover Date'') on which holders of units in that Series (the ''Rollover Series'') may at their option redeem their units in the Rollover Series and receive in return units of a New Series which is created on or about the Rollover Date.

5. There is normally some overlap from year to year in the stocks having the highest dividend yields in an Index and, therefore, between the portfolios of each Rollover Series and the corresponding New Series. For example, of the ten securities selected for inclusion in Value Ten Series 5 on September 7, 1994, eight were still among the top ten dividend yielding stocks in the DJIA as of the date of the amended application.

6. In connection with its termination, each Rollover Series sells all of its portfolio securities on an Exchange as quickly as practicable, but over a period of time so as to minimize any adverse impact on the market price. Similarly, a New Series acquires its portfolio securities in purchase transactions on an Exchange. This procedure creates brokerage commissions on portfolio securities of the same issue that are borne by the holders of units of both the Rollover Series and the New Series. Applicants, therefore, request an exemptive order to permit any Rollover Series to sell portfolio securities to a New Series and a New Series to purchase those securities.

7. In order to minimize overreaching, the Sponsor will certify to the trustee of the Rollover Series and the New Series, within five days of each sale from a Rollover Series to a New Series, (a) that the transaction is consistent with the policy of both the Rollover Series and the New Series, as recited in their respective registration statements and reports filed under the Act, (b) the date of such transaction, and (c) the closing sales price on the Exchange for the sale date of the securities subject to such sale. The trustee will then countersign the certificate, unless, in the unlikely event that the trustee disagrees with the closing sales price listed on the certificate, the trustee immediately informs the Sponsor orally of any such disagreement and returns the certificate within five days to the Sponsor with corrections duly noted. Upon the Sponsor's receipt of a corrected certificate, if the Sponsor can verify the

[1] Investment Company Act Release No. 17096 (Aug. 3, 1989) (proposing amendments to rule 12d3–1).